

Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 168308

62

ORIGIN EUR-12

INFO OCT-01 ISO-00 EB-07 TRSE-00 AID-05 CEA-01 CIAE-00

COME-00 FRB-03 INR-07 NSAE-00 CIEP-01 SP-02 STR-04

LAB-04 SIL-01 SAM-01 OMB-01 L-03 SS-15 NSC-05 /073 R

DRAFTED BY EUR/RPE:RBRESLER:CS

APPROVED BY EUR/RPE:MHLEVINE

EB/OT/STA - BBISHOP

TREASURY:RSELF (SUBS)

----- 094271

R 171435Z JUL 75

FM SECSTATE WASHDC

TO USMISSION EC BRUSSELS

AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY THE HAGUE

LIMITED OFFICIAL USE STATE 168308

E.O. 11652: N/A

TAGS: EEC, GW, BE, IT, ETRD

SUBJECT: COUNTERVAILING DUTIES: FLOAT GLASS CASE

1. JEAN-PIERRE LENG OF EC MISSION DELIVERED FOLLOWING AIDE-
MEMOIRE AUGUST 16 TO ERNEST PREEG, DIRECTOR, EUR/RPE:

THE DELEGATION OF THE COMMISSION OF THE EUROPEAN
COMMUNITIES PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 168308

STATE, AND HAS THE HONOUR TO REFER TO THE PUBLIC ANNOUNCE-

MENTS MADE BY THE TREASURY DEPARTMENT ON JUNE 27 AND JULY 3, 1975 GIVING PRELIMINARY DETERMINATIONS IN CERTAIN COUNTERVAILING DUTY CASES AGAINST EXPORTS OF FLOAT GLASS FROM THE COMMUNITY TO THE UNITED STATES.

THE TREASURY'S NEGATIVE PRELIMINARY DETERMINATION IN THE CASE OF FLOAT GLASS FROM THE UNITED KINGDOM IS HELPFUL IN THAT IT DEMONSTRATES THAT REGIONAL AIDS ARE NOT IPSO FACTO BOUNTIES OR GRANTS WITHIN THE MEANING OF THE UNITED STATES COUNTERVAILING DUTY LAW. HOWEVER, THE BASIS OF THE PRELIMINARY DETERMINATIONS AGAINST FLOAT GLASS FROM THE FEDERAL REPUBLIC OF GERMANY, FROM BELGIUM AND FROM ITALY IS UNACCEPTABLE. THE COMMISSION WISHES TO MAKE IT CLEAR FROM THE OUTSET THAT U.S. COUNTERVAILING ACTION IN ANY OF THESE

CASES, WHETHER AGAINST ONE OR SEVERAL MEMBER STATES, WOULD NECESSARILY EVOKE A COMMUNITY RESPONSE.

THE COMMISSION HAS CLEARLY STATED, IN CONNECTION WITH OTHER U.S. COUNTERVAIL ACTIONS, ITS FUNDAMENTAL POSITION: FIRST, THAT THE APPLICATION OF COUNTERVAILING DUTIES IN THESE CASES WOULD BE INCOMPATIBLE WITH A BASIC PRINCIPLE OF GATT ACCORDING TO WHICH MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR THE THREAT THEREOF, MUST BE DEMONSTRATED; AND IN SECOND, THAT SUCH ACTIONS WOULD THREATEN TO HINDER PROGRESS IN THE MULTINATIONAL TRADE NEGOTIATIONS. THE COMMISSION WISHES TO REASSERT THIS FUNDAMENTAL POSITION AND TO STATE ITS OBJECTIONS TO PARTICULAR FEATURES OF THE POSITIVE PRELIMINARY DETERMINATIONS ON FLOAT GLASS.

THE FACT THAT A FIRM QUALIFIES, GEOGRAPHICALLY OR OTHERWISE, FOR REGIONAL AID APPEARS TO CONSTITUTE FOR THE TREASURY PRIMA FACIE EVIDENCE WHICH THE FIRM IS EXPECTED TO REFUTE BY OPENING ITS RECORDS TO U.S. CUSTOMS INVESTIGATORS. IF COUNTERVAIL CASES ARE TO BE DECIDED ON THE BASIS OF PRIMA FACIE EVIDENCE, THE BURDEN OF PROOF IS REVERSED FROM THE COMPLAINANT TO THE DEFENDENT. SUCH A PROCEDURE WOULD UNDOUBTEDLY BE REJECTED BY THE UNITED STATES AUTHORITIES IF IT WERE ATTEMPTED IN A PURELY DOMESTIC CONTEXT. WHERE INDIVIDUAL FIRMS IN THE COMMUNITY LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 STATE 168308

HAVE CHOSEN TO COOPERATE WITH THE U.S. AUTHORITIES, THE COMMISSION HAS, OF COURSE, RAISED NO OBJECTIONS; BUT THIS DOES NOT IMPLY THAT THE COOPERATIVE SPIRIT (OR OTHERWISE) OF PRIVATE FIRMS IS AN ACCEPTABLE BASIS FOR DISPOSAL OF THE CASES THEMSELVES.

IN THE COMMISSION'S VIEW, CASES BASED ON REGIONAL AIDS CALL FOR CONSULTATION BETWEEN THE PUBLIC AUTHORITIES ON

EACH SIDE, SINCE THE PURPOSE, SCOPE, AND APPLICATION OF REGIONAL AIDS ARE THE RESPONSIBILITY OF PUBLIC AUTHORITIES. THE COMMISSION HAS PREVIOUSLY EXPLAINED TO THE U.S. AUTHORITIES THAT THE REGIONAL AID POLICIES UNDER COMPLAINT ARE DESIGNED TO OFFSET REGIONAL DISADVANTAGES. THE COMMISSION HAS FOUND THESE REGIONAL AIDS ACCEPTABLE UNDER THE COMPETITION RULES OF THE TREATY OF ROME, AND IS SATISFIED THAT IN THESE CASES THERE IS NO OVER-COMPENSATION OF REGIONAL DISADVANTAGES. IT FOLLOWS THAT THERE IS NO OVER-COMPENSATION AVAILABLE TO BENEFIT EXPORTS, WHATEVER THEIR DESTINATION, OR WHATEVER THE PERCENTAGE THEY REPRESENT OF TOTAL OUTPUT OF THE FIRMS INVOLVED.

THE COMMISSION THEREFORE URGES THAT THE POSITIVE PRELIMINARY DETERMINATIONS ANNOUNCED BY THE TREASURY BE FOLLOWED BY NEGATIVE FINAL DETERMINATIONS.

-- THE DELEGATION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES TAKES THE OPPORTUNITY TO RENEW TO THE DEPARTMENT OF STATE THE ASSURANCE OF ITS HIGHEST CONSIDERATION.

2. AFTER DELIVERING AIDE MEMOIRE, LENG NOTED THAT THE EC MEMBER STATES AND THE COMMISSION ARE UPSET BY THE PRELIMINARY POSITIVE FINDING ON FLOAT GLASS, PARTICULARLY SINCE IT FOLLOWS THE CHEESE CASE SO CLOSELY.

3. ON THE EC CONTENTION (PARA 4 AIDE MEMOIRE) THAT REGIONAL AIDS SHOULD BE PRESUMED NOT TO CONSTITUTE BOUNTIES OR SUBSIDIES, PREEG SAID THAT THE U.S. COULD NOT AGREE WITH THIS POSITION AS IT IS POSSIBLE THAT THE PRODUCTION OF A BENEFICIARY OF A REGIONAL AID COULD BE DIRECTED PRIMARILY TO THE U.S. MARKET AS HAPPENED IN THE LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 STATE 168308

MICHELIN TIRE CASE IN CANADA.

4. PREEG SAID HE HOPED THAT WEST GERMANY, BELGIUM AND ITALY WOULD RESPOND TO QUESTIONNAIRES (WHICH WOULD SOON BE DELIVERED) ON ASSISTANCE PROVIDED TO THE FLOAT GLASS INDUSTRIES IN QUESTION. LENG ASSURED PREEG THAT THE COMMISSION WOULD URGE THE MEMBER STATES TO RESPOND TO THE QUESTIONNAIRES. PREEG ADDED THAT HE HOPED A SATISFACTORY SOLUTION TO THE COUNTERVAILING DUTY PROBLEM COULD BE FOUND IN THE MTN. KISSINGER

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: GLASS, COUNTERVAILING DUTIES
Control Number: n/a
Copy: SINGLE
Draft Date: 17 JUL 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CunninFX
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE168308
Document Source: CORE
Document Unique ID: 00
Drafter: RBRESLER:CS
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750248-0134
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750746/aaaabpdc.tel
Line Count: 164
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 22 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <22 APR 2003 by ShawDG>; APPROVED <02 OCT 2003 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: COUNTERVAILING DUTIES: FLOAT GLASS CASE
TAGS: ETRD, GE, BE, IT, EEC
To: EC BRUSSELS MULTIPLE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006